

Message Text

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TO SECSTATE WASHDC 3074

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SUBJ: CALVO CLAUSE AND RELATED PROVISIONS

REF: STATE 024007

1. WHILE PANAMANIAN CONSTITUTION DOES NOT CONTAIN CALVO CLAUSE, CERTAIN LAWS RELATING TO INVESTMENT DO. "FISCAL INCENTIVES LAW FOR THE MANUFACTURING INDUSTRY" STATES THAT "THE FISCAL INCENTIVES OF THIS DECREE WILL BE GRANTED TO THE FIRMS WHICH OBLIGATE THEMSELVES...TO RENOUNCE ANY DIPLOMATIC CLAIM, WHEN PERTAINING TO FIRMS FORMED TOTALLY OR PARTIALLY WITH FOREIGN CAPITAL." (CABINET DECREE 413 OF DECEMBER 30, 1970, ARTICLE 25, G, AS AMENDED BY CABINET DECREE 1972 OF AUGUST 24, 1971, ARTICLE 17, J).

2. "TOURIST DEVELOPMENT INCENTIVES LAW" STATES THAT "IN A CASE CONCERNING A FOREIGN FIRM, IN ORDER FOR IT TO BE GRANTED THE INCENTIVES, IT WILL BE NECESSARY THAT IN THE RESPECTIVE CONTRACT IT IS EXPLICITLY ESTABLISHED THAT THE FIRM IS SUBJECT TO PANAMANIAN LAW AND TO THE JURISDICTION OF THE NATIONAL COURTS; THAT IT RENOUNCE DIPLOMATIC CLAIMS CONCERNING THE RESPONSIBILITIES AND RIGHTS ORIGINATING IN THE CONTRACT, EXCEPT IN THE CASE OF DENIAL OF JUSTICE; AND THAT IT WILL NOT BE CONSIDERED THAT THERE IS DENIAL OF JUSTICE WHEN THE FIRM HAS HAD AVAILABLE, WITHOUT HAVING MADE USE OF THEM, THE RECOURSES AND MEANS OF ACTIONS WHICH COULD BE EMPLOYED IN ACCORDANCE WITH PANAMANIAN LAW."

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(CABINET DECREE 102 OF JUNE 20, 1972, ARTICLE 11).

3. THE WORKING PAPER ENTITLED "BASES OF NEGOTIATION FOR THE GRANTING OF A CONCESSION FOR THE MINERAL EXPLOITATION OF CERRO COLORADO," WHICH WAS INFORMALLY PROVIDED THE EMBASSY LAST FALL BY THE MINISTRY OF COMMERCE AND INDUSTRY (PANAMA A-193, OCTOBER 21, 1974), CONTAINS A CALVO CLAUSE IN PARAGRAPH 26 WHICH READS: "THE PARTIES WILL ATTEMPT IN A DIRECT AND FRIENDLY MANNER TO RESOLVE ANY DIFFICULTY OR CONTROVERSY WHICH MAY ARISE BETWEEN THEM CONCERNING THE INTERPRETATION, IMPLEMENTATION, VALIDITY OR CONCESSION OF THE CONCESSION CONTRACT. IF THEY DO NOT REACH AGREEMENT, THE DIFFERENCE WILL BE SUBMITTED TO THE PANAMANIAN COURTS TO BE RESOLVED ACCORDING TO PANAMANIAN LAW. IN ANY CASE, THE CONCESSIONAIRE WILL DECLARE THAT IT WILL NOT ATTEMPT ANY CLAIM THROUGH DIPLOMATIC CHANNELS. THE ASSOCIATES OF THE CONCESSIONAIRE FIRM WILL HAVE TO MAKE THE SAME DECLARATION."

4. THIRD-PARTY ARBITRATION, E.G. BY APANAMNIAN CHAMBER OF COMMERCE, HAS BEEN UTILIZED HERE IN DISPUTES INVOLVING A FOREIGN FIRM.
JORDEN

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